

## Amend Regulation Section 1859.171

### Section 1859.171. Use of Facility.

If an applicant that has received funding pursuant to Section 1859.164.2(b) and has not met the timelines established in Section 1859.166 on a Preliminary Charter School Apportionment, or is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, and the review process outlined in Education Code Section 17078.62(b)(1) has been completed (if applicable), then the following events shall occur:

- (a) Any qualifying successor Charter School shall be permitted to occupy the facility pursuant to Education Code Section 17078.62(b)(2). A qualifying successor Charter School will be selected in the following manner:
  - (1) The District in which the project is physically located that serves the same grade level as the pupils housed in the project shall publicly notify all eligible Charter Schools authorized to operate in the District's boundaries. An eligible Charter School is at minimum a Charter School with an approved petition that provides classroom-based instruction as defined by EC Section 47612.5(e)(1). A qualifying successor Charter School must be able to assume payment of any funds owed pursuant to SFP Regulations, Section 1859.168, enter into the Charter School Agreements, and be found Financially Sound by CSFA, in addition to any District requirements approved by both OPSC and CSFA. Examples of possible District requirements may include, but are not limited to:
    - (A) requirements to avoid a health and/or safety concern, such as grade levels of charter schools that are co-located on other school sites,
    - (B) if local funds were provided to construct the facility, requirements or restrictions related to local fund sources that do not conflict with CSFP requirements.
  - (2) If more than one eligible Charter School responds to the District's notification, the District must use a fair and competitive process, such as a request for proposal, to identify and rank eligible Charter Schools. When ranking eligible charter schools, preference shall be provided to charter schools that serve Low Income students as determined by the percentage of students eligible to receive Free and Reduced-Price Meals, as well as charter schools that meet the definition of a Non-Profit Entity. Districts may add additional preference point categories approved by OPSC and CSFA. The combined total eligible points and/or weighting provided by the additional District categories shall not exceed the combined total eligible points and/or weighting for Low Income and Non-Profit Entity categories. Examples of possible District preference points categories that may be used upon approval by OPSC and CSFA include, but are not limited to:
    - (A) Charter Schools that will relocate from a District property that is not a school,
    - (B) Charter School's serving students in the same grade level as the constructed classrooms in the facility,
    - (C) Charter Schools whose use of the Facility will resolve a current health and/or safety issue at its current location on District property,
    - (D) Charter Schools that serve a certain threshold of in-district students or will serve district unhoused students.
- (3) The District, with approval from the OPSC and CSFA, must identify, in ranking order if applicable, a successor Charter School.
- (4) If multiple Charter Schools apply jointly to be a successor charter school, they will be treated as one applicant for purposes of assigning preference points and ranking. Preference points will be assigned based on the school with the enrollment majority as documented in the approved charter petition(s) for the grade levels that will use the Facility.

- (b) If after the steps in subsection (a) are complete, no qualifying successor Charter School is identified or chooses to occupy the facility, the school district in which the project is physically located that serves that same grade level as the pupils housed in the project, may elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:
- (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
  - (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).
  - (c) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.
  - (d) Pursuant to Education Code Section 17078.62(b)(5)(B), if the school district declines to dispose of the facility it shall provide written notice of its rejection to the Board in the form of written action taken by the governing board of the school district and the Board shall dispose of the property.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.62, Education Code.